



COPY

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF VIRGINIA
NORFOLK DIVISION

KATHLEEN KITTERMAN, ANNA) CIVIL ACTION NO.:
CRONIN, CORRIE BALL, MARVIN) 2:12-CV-146
BALL, MARGARET BROGAN and)
EVAN JONES,) DEPOSITION OF:
Plaintiffs,) FORTINO GARCIA

vs.)

CLAUDIO TOVAR-GUZMAN,)
FORTINO GARCIA and SONS)
HARVESTING, INC. and)
KUZZENS, INC. d/b/a LIPMAN)
LFC AGRICULTURAL SERVICES,)
INC. d/b/a LIPMAN LFC)
ENTERPRISES, INC., d/b/a)
LIPMAN,)

Defendants.)

-----)
KATHLEEN KITTERMAN and ANNA) CIVIL ACTION NO.:
CRONIN,) 2:14-CV-16

Consolidated Plaintiffs,)

vs.)

LFC AGRICULTURAL SERVICES,)
INC. d/b/a LIPMAN LFC)
AGRICULTURAL ENTERPRISES,)
INC., d/b/a LIPMAN,)

Consolidated Defendants.)
-----)

EXHIBIT

3

tabbles

Given before Aaron Selman, Court
Reporter and Notary Public, in the offices of
Moss, Kuhn & Fleming, 1501 North Street, Beaufort,
South Carolina, on Monday, July 7, 2014,
commencing at 10:00 a.m.

BETTYE ANDERSON & ASSOCIATES

Certified Court Reporters

(843) 525-0791 (800) 543-5506

1 Lipman's registration office --

2 A. Yes.

3 Q. -- where they scanned in, where they all
4 scanned in? And then from Lipman's registration
5 office to Lipman's farm?

6 A. Yes.

7 Q. Did you know I was asking to take Victor
8 Roman's deposition about three or four weeks ago?

9 A. Yes.

10 Q. Did you tell anybody that I wanted to
11 take Victor Roman's deposition?

12 A. No.

13 Q. You didn't? You didn't tell Victor
14 Roman?

15 A. Yes, I told him.

16 Q. You did tell Victor Roman?

17 A. Yes.

18 Q. Did you tell David Garcia?

19 A. No.

20 Q. When you told Victor Roman, what did he
21 say?

22 A. He would come.

23 Q. And then shortly after you told Victor
24 Roman that I wanted to take his deposition, he was
25 fired?

1 A. Right.

2 Q. Okay.

3 A. Terminated.

4 Q. Terminated?

5 A. Um-hmm.

6 Q. And he was terminated by Lipman?

7 A. Right.

8 Q. Where is he now working?

9 A. I don't have a clue.

10 Q. Is he in South Carolina?

11 A. I don't know.

12 Q. Do you know where he lives?

13 A. No.

14 Q. Where did he live before he was
15 terminated?

16 A. Here at the labor camp.

17 Q. But he's no longer there now?

18 A. No.

19 Q. And when he was in Florida, where did he
20 live?

21 A. Labor camp.

22 Q. Is that a Lipman labor camp?

23 A. Yes.

24 Q. Jose Polito was the one that fired him?

25 A. Yes. He brought the paperwork.

1 field trucks that you use, correct?

2 A. Farm trucks, yes.

3 Q. And I think you said they collect the
4 tomatoes from the bin and take them. And then I
5 didn't type fast enough. I didn't get that
6 answer. The farm trucks collect the tomatoes from
7 the bin and take them to the --

8 MR. HARMAN: Farm trucks go get the bins.
9 Then when they're loaded up, they bring the loaded
10 bins back to the plant.

11 BY MR. BROGAN:

12 Q. Is that correct?

13 A. Yes.

14 Q. So the trucks take the bins to the field,
15 and then they take the bins that are loaded to the
16 processing plant, is that accurate?

17 A. Yes.

18 Q. And in your first deposition, you said
19 that Tovar Guzman actually operated those field
20 trucks for you?

21 A. In the field. In the field. He moves
22 them in the field.

23 Q. Okay.

24 A. Because as they go, the people, they're
25 picking, and he would move it up every hundred

1 what to do while they were scanning in?

2 A. We just -- all the crew leaders get in
3 line and they call you by name -- by number
4 actually. When they call my number which is 070,
5 I move the bus. They get off. They walk around.
6 Scan in. Drive the bus to the other end. And
7 they get in the buses. The drivers do not get off
8 the buses.

9 Q. The place where they scanned in, was that
10 in a building?

11 A. They got like a little shack. They walk
12 in. Scan their cards in. Walk out the other end.

13 Q. Were there employees from Lipman or
14 Kuzzens who were in there scanning them in?

15 A. Yes.

16 Q. And then they would come back and get on
17 the bus again?

18 A. Right.

19 Q. And then the bus would take them to the
20 fields?

21 A. Correct.

22 Q. And when the bus took them to the fields,
23 would you stay as a crew chief and watch them
24 work?

25 A. Yes.

1 Q. Were there any Kuzzens employees or
2 Lipman employees there as well?

3 A. Yes.

4 Q. Was there a supervisor from Lipman or
5 Kuzzens who was there managing what was going on?

6 A. Yes.

7 Q. Who would that have been in 2011?

8 A. I don't remember.

9 Q. But that would have been the person who
10 was in charge of you?

11 A. Yes.

12 MR. BOBBY GARCIA: There's different guys
13 that come out and check on --

14 BY MR. FIORELLA:

15 Q. I understand. But there are some Lipman
16 or Kuzzens employees who were there. You're a
17 crew chief, correct?

18 A. Yes.

19 Q. And then there were Lipman's or Kuzzens'
20 employees who were there watching you and telling
21 you what to do, right?

22 A. Yes.

23 Q. Did those Lipman's and Kuzzens' employees
24 watch the laborers, too?

25 A. Yes.

1 Q. Would they tell the laborers what to do?

2 A. They told us, and we tell the laborers.

3 Q. What kinds of things would they tell you
4 to do?

5 A. Well, actually, just to make sure to get
6 the correct stuff that the company asked for.

7 Q. Meaning the --

8 A. The size tomatoes, you know, rice, greens
9 or whatever and stuff like that. And make sure
10 they don't leave fruit in the vine in the bush.

11 Q. Were they out there the entire time?

12 A. Yes.

13 Q. So there was management from Lipman's or
14 Kuzzens out there at the farm watching laborers
15 all day long?

16 A. Yes.

17 Q. Did your company provide any services to
18 any other companies other than Lipman or Kuzzens?

19 A. No.

20 Q. This contract that you signed on page 1
21 Section C, it says, "Contractor is unrelated to
22 Principal and provides Services to businesses
23 other than Principal." Do you see that?

24 MR. BOBBY GARCIA: What does that mean?

25 MR. FIORELLA: Sorry. I will ask a

1 question about it in just a second.

2 BY MR. FIORELLA:

3 Q. This contract says that you were working
4 for other companies, too, not just for Lipman and
5 Kuzzens.. Is that true?

6 A. No.

7 Q. So you worked exclusively for Lipman and
8 Kuzzens, is that right?

9 A. Well, like they change names. It's
10 Lipman. It used to be "Farm Op." They have
11 Kuzzens, Lipman. I don't know if that's what
12 they're trying to say.

13 Q. But whatever the family of companies was,
14 you worked only for them?

15 A. Correct.

16 Q. And the work that you did for them
17 required that you have buses to transport the
18 workers from the housing to wherever they were
19 going for work, is that correct?

20 A. Yes.

21 Q. And that's largely because those workers
22 who were there, as we found out today or you've
23 known, lived on the premises?

24 A. Yes.

25 Q. They didn't have any other residences,

1 correct?

2 A. No.

3 Q. Did they pay rent?

4 A. No.

5 Q. So whatever entities, Lipman or Kuzzens,
6 they allowed the workers to stay in the housing
7 for free?

8 A. Yes.

9 Q. And that was part of their pay for
10 working?

11 A. Yes.

12 Q. Was that true in every farm?

13 A. Yes.

14 Q. So these workers would go from Florida
15 where they were living in housing that was
16 supplied by Lipman's and Kuzzens, is that right?

17 A. Yes.

18 Q. Then they would go to South Carolina, the
19 same situation?

20 A. Yes.

21 Q. And then they would go to Virginia, the
22 same situation?

23 A. Yes. But always different people, not
24 the same ones. People change.

25 Q. Sure, I understand.

1 A. I mean it's not the same people.

2 Q. It's not the same people every year?

3 A. Right.

4 MR. BOBBY GARCIA: But the system works
5 the same.

6 A. Every two, three weeks, some of them go,
7 some of them come in.

8 BY MR. FIORELLA:

9 Q. Understood. And then the same buses that
10 were being used so that the employees would go
11 from the Lipman housing to where they were working
12 were the buses you were using to transport the
13 belongings or the luggage, so to speak, for some
14 of the workers to Virginia at the time this
15 accident took place, is that right?

16 A. Yes.

17 Q. Did you have a scheduled start time for
18 when the work was going to commence in Virginia?

19 A. They let us know.

20 Q. Were you --

21 A. It all depends on the weather.

22 Q. Well, in this situation, the bus was
23 going from South Carolina to Virginia --

24 A. Correct.

25 Q. -- when the accident took place?

1 A. No.

2 Q. How were they paid?

3 A. By the bucket, by the chip.

4 Q. Was there a minimum amount you were
5 required to produce when you were in the field?
6 Did they get upset if you didn't produce a certain
7 amount?

8 A. No.

9 Q. But there was incentive to produce as
10 much as possible because you got paid by the
11 bucket?

12 A. Right.

13 Q. And the employees were getting paid by
14 the bucket and you were getting paid by the bin?

15 A. Right.

16 Q. Everybody wanted to pick as much as they
17 could?

18 A. Right.

19 Q. Did you all get paid at the same time?
20 Did people go and get their check somewhere?

21 A. At the office, yes.

22 Q. Did the bus take the people to get their
23 checks?

24 A. Yes.

25 Q. Do you remember in 2011 that you were

1 taking Tovar Guzman to pick up his check on
2 occasion?

3 A. I don't remember. I took the buses, but
4 I don't know if he was there or he was not, but,
5 yes. We take the busses every Friday.

6 Q. But in 2011, he was there working. Did
7 you think he was working for free?

8 A. No.

9 Q. So he was getting paid?

10 A. Yes.

11 Q. Did you have some employees you trusted
12 more than others because you knew them longer?

13 A. Not really, no.

14 Q. Well, how did he get to the point where
15 you were allowing him to drive the bus when he was
16 there?

17 A. Because he --

18 MR. CASEY: Object to the form.

19 MR. HARMAN: Object to the form.

20 MR. CASEY: Mischaracterization of prior
21 testimony. He didn't drive the bus. He drove the
22 truck.

23 BY MR. FIORELLA:.

24 Q. How did you get to the point where you
25 were allowing him to drive the truck?

1 A. Yes.

2 Q. So you did not actually hand people their
3 checks when they were working for you, is that
4 right?

5 A. No.

6 Q. That's not right or, yes, it is right?

7 A. What was that again?

8 Q. Did you actually hand people their
9 checks?

10 A. No.

11 Q. Who gave them the checks?

12 A. Lipman's securities.

13 Q. To your knowledge, did Lipman ever
14 require an ID or anything for people when they
15 were giving them checks?

16 A. Yes.

17 Q. Did you stay in the building when they
18 were giving them the checks or were you outside?

19 A. I was outside.

20 Q. On page 4 of the contract agreement, I
21 think it's marked as Exhibit 1, under "Payroll."
22 Do you see that?

23 A. Um-hmm.

24 MR. HARMAN: We have it in front of him
25 MR. FIORELLA: